



Inside this edition

- Restriction on number of layers for certain classes of holding companies
- Intimation to Registrar in e-form DPT-3 by private company for acceptance of deposits by members
- Clarification of the term “Joint-Venture” in respect of exemption given to certain unlisted public companies under the Companies (Appointment and Qualification of Directors) Rules, 2014, from the appointment of Independent directors
- Department of Financial Services advises all Banks to put restrictions on bank accounts of “Struck Off” Companies

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Restriction on number of layers for certain classes of holding companies

MCA in its notification dated 20th September, 2017 makes the Companies (Restriction on number of layers) Rules, 2017, which states the no company, other than a company belonging to a class specified in sub-rule (2) below shall have more than two layers of subsidiaries.

Provided that the provisions of this sub-rule shall not affect a company from acquiring a company incorporated outside India with subsidiaries beyond two layers as per the laws of such country.

Provided further that for computing the number of layers under this rule, one layer which consists of one or more wholly owned subsidiary or subsidiaries shall not be taken into account.

(2) The provisions of this rule shall not apply to the following classes of companies, namely: -

- (a) a banking company as defined in clause (c) of section 5 of the Banking Regulation Act 1949 (10 of 1949);
- (b) a non-banking financial company as defined in clause (f) of Section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934) which is registered with the Reserve Bank of India and considered as systematically important non-banking financial company by the Reserve Bank of India.
- (c) an insurance company being a company which carries on the business of insurance in accordance with provisions of the Insurance



Act, 1938 (4 of 1938) and the Insurance Regulatory Development Authority Act, 1999 (41 of 1999).

(d) a Government company referred to in clause (45) of section 2 of the Act.

(3) The provisions of this rule shall not be in derogation of the proviso to sub-section (1) of section 186 of the Act.

(4) Every company other than a company referred to in sub-rule (2) existing on or before the commencement of these rules, which has number of layers of subsidiaries in excess of the layers specified in sub-rule (1) –

(i) shall file, with the Registrar a return in Form CRL- 1 disclosing the details specified therein, within a period of one hundred and fifty days from the date of publication of these rules in the official Gazette;

(ii) shall not, after the date of commencement of these rules, have any additional layer of subsidiaries over and above the layers existing on such date; and

(iii) shall not, in case one or more layers are reduced by it subsequent to the commencement of these rules, have the number of layers beyond the number of layers it has after such reduction or maximum layers allowed in sub-rule (1), whichever is more.

(5) If any company contravenes any provision of these rules the company and every officer of the company who is in default shall be punishable with fine which may extend to ten thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.



The said notification would be applicable w.e.f 20th September, 2017.

Intimation to Registrar in form DPT-3 by private company for acceptance of deposits by members

MCA in its notification dated 19th September, 2017 makes the following further amendment in the Companies (Acceptance of Deposits) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Acceptance of Deposits) Second Amendment Rules, 2017.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Acceptance of Deposits) Rules, 2014 (hereinafter referred to as the principal rules), in rule 3, in sub-rule (3), for the proviso, the following shall be substituted, namely:-

"Provided that a Specified IFSC Public company and a private company may accept from its members monies not exceeding one hundred per cent of aggregate of the paid up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in Form DPT-3.

The said amendment Rules inter-alia provide for substitution of existing Form DPT-3 with a new Form DPT-3.

Stakeholders have sought clarifications w.r.t. timelines of the applicability/availability of the new Form DPT-3.

The new Form DPT-3 shall be made available for E-filing after the month of November, 2017 and till the time the new e-form is made available, the existing e-form can be used.



Explanation:- For the purpose of this rule, a Specified IFSC Public company means an unlisted public company which is licensed to operate by the Reserve Bank of India or the Securities and Exchange Board of India or the Insurance Regulatory and Development Authority of India from the International Financial Services Centre located in an approved multi services Special Economic Zone set-up under the Special Economic Zones Act 2005 (28 of 2005) read with the Special Economic Zones Rules, 2006.

Provided further that the maximum limit in respect of deposits to be accepted from members shall not apply to following classes of private companies, namely:-

(i) a private company which is a start-up, for five years from the date of its incorporation

(ii) a private company which fulfils all of the following conditions, namely:-

(a) which is not an associate or a subsidiary company of any other company;

(b) the borrowings of such a company from banks or financial institutions or anybody corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is less ; and

(c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under section 73.

Provided also that all the companies accepting deposits shall file the details of monies so accepted to the Registrar in Form DPT-3.



Clarification of the term “Joint -Venture” in respect of exemption given to certain unlisted public companies under the Companies (Appointment and Qualification of Directors) Rules, 2014, from the appointment of Independent directors

Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 provides that an unlisted public company which is a joint venture, a wholly owned subsidiary or a dormant company will not be required to appoint Independent Directors. Stakeholders have sought clarifications with regard to the meaning of joint venture for the purposes of availing exemption under Rule 4 of the aforesaid Rules as such a term is not defined in the Companies Act 2013.



It is hereby clarified that a "joint venture" would mean a joint arrangement, entered into in writing, whereby the parties that have joint control of the arrangement, have rights to the net assets of the arrangement. The usage of the term is similar to that under the Accounting Standards.

Department of Financial Services advises all Banks to put restrictions on bank accounts of “Struck Off” Companies

Department of Financial Services advises all Banks to take immediate steps to put restrictions on bank accounts of over two lakh ‘struck off’ companies. The existing Directors will become defaulting directors and will not be able to operate bank accounts of such companies till such companies are legally restored under section

252 of the Companies Act by an order of the National Company Law Tribunal.

Malaysian Association of Company Secretaries (‘MACS’) to adopt the Secretarial Standards issued by the Institute of Company Secretaries of India (‘ICSI’) as the benchmark

MCA in its press release dated 14/09/2017 approved the a request of the Malaysian Association of Company Secretaries (MACS) for adoption of the Secretarial Standards issued by the Institute of Company Secretaries of India (ICSI) as the benchmark in the development of Secretarial Standards of MACS.

The Secretarial Standards on Meetings of the Board of Directors and Secretarial Standard on General Meetings were approved by the Ministry of Corporate Affairs, Government of India under sub-section 10 of Section 118 of the Companies Act, 2013 and are in place with effect from 1st July, 2015.

Delegation of powers of Regional Directors subject to revocation by Central Government

The Central Government hereby delegates to the Regional Directors at Mumbai, Kolkata, Chennai, New Delhi, Ahmedabad, Hyderabad and Shillong, the powers and functions vested in it under sub-section (2) of section 66 of the companies act 2013 in relation to reduction of share capital, subject to the condition that the Central Government may revoke such delegation of powers or may powers under the said sub-section, if in its opinion such a course of action is necessary in the public interest. This notification



shall come into force with effect from the date of its publication in the Official Gazette.

Obligation to comply with the Indian Accounting Standards (Ind AS) and Rule 4 of Companies (Indian Accounting Standards) Rules, 2015- Payments Banks, Small Finance Banks which are subsidiaries of Corporates

Some stakeholders have sought clarification with regard to implementation of Ind AS which were notified by MCA vide notification no G.S.R 365 (E) dated 30.10.2016 as Companies (Indian Accounting Standards) Amendment Rules, 2016, wherein the holding company has Payments Banks or Small Finance Banks as its subsidiaries.

It is hereby clarified that the holding company if it is covered by the corporate sector roadmap for implementation of Ind AS, shall follow the corporate sector roadmap and if the company has got payment bank or small finance bank as its subsidiary then subsidiary company shall follow the banking sector roadmap prescribed vide RBI circular DBR.BP.BC.No.76/21.07.001/2015-16 dated 11th February, 2016 on “implementation of Indian Accounting Standards (Ind As) read with circular DBR.NBD.No.25/16.13.218/2016-17 dated 6th October, 2016 on “Operating Guidelines for Payments Banks”. However, the Payment Banks or Small Finance Banks shall provide the Ind AS financial data to its holding company for the purpose of consolidation.



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